

that prohibits meritorious lawsuits from being brought. He makes quite clear his concern that, in fact, that would be the necessary result of passage and ultimate implementation of the bill as it had originally been passed through the House and the Senate.

The pleading requirement, as it has been included in the legislation originally, must be modified so that it is tough, but that it is also reasonable.

The Second Circuit's existing standard for pleading, which passed the Senate, by the way, in June, should be included in the bill, in my opinion. This is the second highest priority, I think, overall in this legislation, along with a number of other concerns which I will raise a little bit later.

My colleagues should note that the ninth circuit, which includes California, rejected the second circuit standard in favor of a much more relaxed approach. So, the codification of the second circuit's standard is something which in my opinion is something that we should be debating out here on the floor.

The issue has been raised by Senator SPECTER who has taken the time to write to the White House and he strenuously objects to the bill in its present form. Leading legal scholars, including the dean of the NYU Law School, believes that this is one of the most harmful issues in the bill.

In addition, and something that is quite important in the overall deliberations, is the safe-harbor provision for forward-looking statements, which would give blanket immunity to those who would commit intentional fraud. A scienter requirement should be added to the safe-harbor so that intentional wrongdoers cannot cloak them in immunity that was intended only for those who make good-faith projections in estimates. That is, in fact, a contention which has to be debated throughout this entire proceeding.

Mr. Speaker, it is important to note that the statement of managers accompanying the conference report instructs courts to look only at the adequacy of the meaningful cautionary language to determine if the safe-harbor should apply. The state of mind of the company's executives, meaning whether not they intended to deceive or to mislead investors, is supposed to be irrelevant, even if the executive of the company, of the financial firm, intentionally lies to the investing public.

Now, that is wrong; simply wrong, and it must be addressed in this debate that we are having on such an important piece of legislation.

I also want to note that this revision would be consistent with a statement previously attributed to the President, which I think is now quite clear in his veto message, that he could not sign a bill that allowed someone to lie intentionally and to get away with it. That is the core of his message, and it is something that I think we are going to have to deal with today, and in the subsequent days ahead, as we with

what the ramifications of passage of this bill without inclusion of the very wise recommendations that have been made by the President to the Congress in his veto message.

Mr. Speaker, I reserve the balance of my time.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. FIELDS], the chairman of the Subcommittee on Telecommunications and Finance.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Speaker, it is with a heavy heart that I rise today. The Congress crafted strong bipartisan legislation designed to curb securities litigation abuse. The legislation was approved by veto-proof majorities in both houses. The President obviously does not see the wisdom of the approach and vetoed the legislation.

Mr. Speaker, I call on all Members to override this veto on this very important piece of legislation. As was pointed out in the floor debate, American companies, particularly high-technology companies in California, have become the target of speculative, abusive securities litigation which enriches lawyers at the expense of shareholders and the economy.

These abusive securities lawsuits are brought by a relatively small number of lawyers specializing in initiating this type of litigation. In many cases, the plaintiffs are investors who own only a few shares of the defendant corporation and the corporations are frequently high-technology companies whose share price volatility precipitates that lawsuit.

The plaintiffs do not need to allege any specific fraud. Many of these suits are brought only because the market price on the securities has dropped. The plaintiff's attorneys name, as individual defendants, the officers and directors of the corporation and proceed to engulf management in a time-consuming and a costly fishing expedition for the alleged fraud.

Mr. Speaker, it has been pointed out that one of the most compelling statistics for reform, I believe, comes from Silicon Valley where one out of every two companies has been the subject of a 10(b)(5) securities class action.

Mr. Speaker, the current securities litigation system is seriously affecting the competitiveness and the productivity of America's high-technology companies, and it is also affecting our ability to create jobs.

In summary, Mr. Speaker, I believe we have demonstrated that the current securities litigation system promotes meritless litigation, shortchanges investors and it costs jobs. It is a showcase example of the legal system gone awry.

Mr. Speaker, I urge Members to override this veto to support wise and prudent litigation reform.

Mr. MARKEY. Mr. Speaker, I yield such time as he may consume to the

gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, a bad bill, conceived with bad process, badly handled, leading to serious abuses in the marketplace, putting innocent and helpful investors at mercy of scoundrels and rogues, has been vetoed by the President.

□ 1100

The President said that he is prepared to sign a good bill, that he is prepared to work with the Congress to end the litigation abuses while at the same time protecting the legitimate rights of ordinary investors. He says that in his message.

I urge my colleagues to listen to the President of the United States and to read the veto message, to see why it is this iniquitous piece of legislation was vetoed. It is a poor piece of legislation. It favors rascals and rogues over the innocent and the honest. It creates a situation where a law-abiding citizen cannot get decent redress in the courts. It raises questions as to the integrity of the American process for offering securities, and it will raise questions about the integrity of our markets. It will ultimately hurt the process of developing capital in this country because it will threaten the thing which is absolutely essential to the workings of the capital markets of the United States, and that is public confidence.

A lot of people think that the public securities offerings and the industry in this country run on money. That is not true. The market runs on public confidence, and if it produces the public confidence it has been doing since the 1934 act was passed, the market produces a lot of money for everybody involved.

What is wrong with this bill? First, the process was unfair, and no careful attention was given to responsible amendments or to intelligent discussion of the abuses that were going to be unleashed upon the investing public.

But beyond that, the President points out why he has vetoed it. The pleading requirements require not a genius but a psychiatrist, and the discovery process is closed until such time as it is impossible to deal with the claims that an honest claimant would make who had been improperly treated and had been hurt by improper behavior of scoundrels in the securities industry.

Second, it has a most curious safe harbor provision, a safe harbor provision which permits active fraud, active fraud, deceit, and serious misbehavior.

I would urge my colleagues to not permit a safe harbor provision which allows such scandalous behavior to be inflicted upon the trusting and the innocent investor by slippery managers of corporations interested in maximizing stock prices or their particular earnings.

Last of all, it treats the plaintiffs in suits of this kind in a way which makes the loser pay, a situation which

will deny honest citizens who might not prevail in a lawsuit an opportunity to expect fair treatment from the courts of their country.

I would urge my colleagues to support the President. The veto is a good one. If the veto is sustained, we can come back and write a decent bill. We can write a bill which addresses the real problems which exist with regard to litigation abuses, and at the same time we can protect American investors and protect the confidence of the American people in their securities industry and their securities markets. That is the step which would be in the best interests of not only the country, the securities market, the securities industry, public confidence in the securities that are offered in this country, but also something which is best and fairest to those who do not have the means to protect themselves against malefactors of great wealth.

I urge my colleagues to vote to sustain the veto. I urge my colleagues on the committee who have the ability to do these things to then work with us to achieve a decent bill which protects the interests of all.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from California [Ms. ESHOO], a member of the committee.

(Ms. ESHOO asked and was given permission to revise and extend her remarks.)

Ms. ESHOO. Mr. Speaker, I rise in strong support this morning of this measure to override the President's veto of the securities litigation conference report. I think that it is highly regrettable that the President chose to send up a veto message to us. With all due respect to that veto message, I think that it is an excuse slip.

On every point that is mentioned in the veto, in a bipartisan effort all of this year we have worked to satisfy the concerns of the Securities and Exchange Commission, the administration, and the Senate in the key areas, certainly on pleadings and second circuit language, certainly on safe harbor, and that is also mentioned in the veto message, and certainly on statute of limitations. This bill is a strong bipartisan bill. It is good for investors, and it is good for our economy.

In my view, the price of not passing this conference report this year is simply too high. As the Representative from Silicon Valley, I know that businesses in my region cannot wait for an answer. The legislation provides companies with relief, but not a blank check. The right of investors to sue in cases of actual fraud is protected by this bill. In fact, the bill's safe harbor provision meets the demands set down by CALPERS, the Nation's largest pension fund, representing nearly 1 million shareholders.

Members who supported the conference report are now being asked to change their vote to satisfy its concerns about report language. I do not remember when report language was

reason for a veto, and that is why I call it an excuse slip and not a true veto message.

Mr. Speaker, I urge my colleagues to override the President's veto. I think it is regrettable, but I think that this bill needs to become law.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, Members of the House, I, too, rise in support of this bill and for the motion to override the veto.

Let me point out what the President did not do. He did not say this was a bad bill. In fact, he complimented it. He said he supported goals of this bill. He did not say that he objected to the safe harbor provisions of this bill. In fact, he said he supported the language of the safe harbor provisions of this bill.

In fact, all he has said he objected to was the pleading requirements of this bill. Now, the pleading requirements are what the plaintiff lawyer does when he files a lawsuit, and what we have done is to make sure that the lawyer alleges a case, that you just do not go on a fishing expedition. Is that terrible?

I suggest if we are trying to deal with frivolous lawsuits, that is the very least we ought to do is require the plaintiff lawyer to plead a case, to have a decent and not a frivolous lawsuit before the court.

Second, he objected to the managers' language, not the language of the bill. I would remind the House that when a bill is sent to the President, the managers' language, the legislative history is not sent to the President. He does not veto the legislative history. He vetoes the language of the bill. He does not veto the language in the bill. He only objected to the language of the managers' report in that area. He supports, in fact, the safe harbor provisions that a previous speaker objected to this in this bill.

Finally, he objected to what is called the rule 11 section, where frivolous lawsuits are punished; that is, the plaintiff is required to put up the cost of the lawsuit. I want point out to you that he said in his veto message that we did something wrong here; we did not have a balance between plaintiffs and defendants.

First of all, it is plaintiffs who file frivolous lawsuits, not defendants. That is the problem. And rule 11 seeks to make sure when plaintiff lawyers file frivolous lawsuits that they have the obligation of paying the costs of the parties who are necessarily brought to court and required to hire attorneys.

Let me point out our language was very fair. It said that existing rules would apply to each party, plaintiffs and defendants, and that a violation by a party, plaintiff or defendant, would require mandatory sanctions by the court.

We have a balanced provision in here. What I concluded when I read this veto message is, one, the President likes the bill; two, he does not really want to sign it. He would rather we overrode his veto and we made it law. And, three, that we have huge bipartisan support for this bill, and we ought to, in fact, override the veto. Nearly 100 members of the Democratic side joined the Republican Party in this bill. It is a bill that has been in the works for well over 6, perhaps 8, years now. It is a bill in which a veto-proof majority in the House and Senate adopted the bill. It is a bill, in fact, that ought to become law. If the President will not sign it, then he is telling us to do it, and I suggest we do like Mikey, we just do it, override this veto.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at this point, the Members are presented with a very narrow issue: Will the House block meritorious suits, or will it allow meritorious suits to go forward in the courts of this country as they have throughout our history?

The President has asked for a very narrow set of changes. This is not about frivolous lawsuits any longer. The President agrees that frivolous lawsuits must be discontinued.

This is now a battle over whether or not we will support the President's veto, sustain him and, in fact, then begin the discussion over the narrow set of issues which he has raised to ensure that this bill does not go too far in cutting off the meritorious cases which citizens of our country have been allowed to bring throughout our history.

The President has said that he will sign just about anything in the bill except those provisions which block meritorious suits. The veto message makes very clear what changes he is seeking, and that those changes are meant to protect investors who have been defrauded.

Let me emphasize again that the President is not seeking to allow frivolous suits. The only issue raised by his veto message is whether or not, in fact, we will deal with the points in the legislation which have gone too far, which have raised pleadings standards too far, which have changed the safe harbor provisions to the point where actual lying is permitted, which put an unfair burden upon plaintiffs in terms of the risks which they must assume in terms of loser-pays. That is what we are talking about now. The rest of it the President says is acceptable to him.

Now, he is in good company. Let me read to you some of the people who side with the President. We begin with the Fraternal Order of Police, the Fraternal Order of Police, "I urge you to reject the bill which would make it less risky for white-collar criminals to steal from police pension funds while the police are risking their lives against violent criminals." That is the national president of the Fraternal Order of Police.